



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/800,466

03/15/2004

Richard Cogswell

06694-003001

3188

26161

7590

07/26/2007

FISH & RICHARDSON PC

P.O. BOX 1022

MINNEAPOLIS, MN 55440-1022

EXAMINER

LEWIS, KIM M

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

07/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,466

Applicant(s)

COGSWELL, RICHARD

Examiner

Kim M. Lewis

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 3/15/04 has been received and made of record in the application file wrapper. Note the acknowledged form PTO-1449 enclosed herewith.

Drawings

2. The drawings are objected to because "12" in Fig. 10, should read --120--, "120" in Fig. 10 should read --122--, and "122" in Fig. 10" should read --132--. In Fig. 7, "132" associated with the second leg member is incorrect since "132" has been used to designate the transverse loop of the second lower portion. In Fig. 8, "12" should be --122--.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

Art Unit: 3772

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 14 is objected to because of the following informalities:

Claim 14, line 2 "fasteners" should read --fastener--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As regards claim 2, "said belt portion" lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3772

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3-7, 10-14, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,643,184 ("Toso").

As regards claim 1, Toso discloses a back support with knee and foot engaging straps that can be used as a sleep-aiding device for reducing leg muscle cramping during sleep. The device of Toso comprises a belt member (14) being that is capable of being worn at a wearer's waist in use during sleep, a first leg member (26) capable of being worn in use during sleep, with an upper end portion attached at said belt member and a lower end portion attached at a lower portion of a wearer's first leg, below the wearer's knee, and a second leg member (28) capable of being worn in use during sleep, with an upper end portion attached at said belt member and a lower end portion attached at a lower portion of a wearer's second leg, below the wearer's knee, said first leg member being adjustable (col. 3, lines 30-33) to a predetermined length between attachment at said belt member and attachment at the lower portion of the wearer's first leg and said second leg member being adjustable (col. 3, lines 30-33) to a predetermined length between attachment at said belt member and attachment at the lower portion of the wearer's second leg, said predetermined length of said first leg member and said predetermined length of said second leg member capable of being selected to restrict stretching of the wearer's legs to full extension during sleep (note Fig. 4).

As regards claim 3, Toso discloses the device of claim 1, wherein said lower end portion of said first leg member defines a lower loop (34) for receiving a wearer's first foot therethrough, and said lower, end portion of said second leg member defines a lower loop (36) for receiving a wearer's second foot therethrough.

Regarding claim 4, as can be seen in Fig. 4, Toso discloses that the lower loop of said first leg member in use during sleep is capable of encircling the wearer's first foot and said lower loop of said second leg.

As regards claim 5, Toso discloses the device of claim 4, wherein said lower loop of said first leg member defines a circumference capable of being adjustable to engage snugly about the wearer's first foot and said lower loop of said second leg member defines a circumference adjustable to engage snugly about the wearer's second foot.

As regards claim 6, Toso discloses the device of claim 5, wherein said lower end portion of said first leg member terminates in a bottom end loop engaged about said first leg member and capable of sliding positioning therealong for adjustment of the circumference of said lower loop of said first leg member, and said lower end portion of said second leg member terminates in a bottom end loop engaged about said second leg member and is capable of sliding positioning therealong for adjustment of the circumference of said lower loop of said second leg member.

As regards claim 7, Toso discloses the device of claim 6, further comprising a first fastener in the form of a buckle for releasable securement of said bottom end loop of said first leg member along said first leg member and a second fastener in the form of

a buckle for releasable securement of said bottom end loop of said second leg member along said second leg member.

As regards claim 10, Toso discloses the device claim1, wherein said belt member encircles the wearer's waist in use during sleep (see Fig. 4).

As regards claim 11, Toso discloses the device of claim 10, wherein the belt member has an effective length adjustable to accommodate attachment about wearers of different waist dimensions (col. 3, lines 13-19).

As regards claim 12, Toso discloses the device of claim11, wherein said belt member defines a first end portion and an opposite second end portion and comprises a belt releasable fastener for adjustably joining said first end portion and said second end portion (col. 3, lines 13-14).

As regard claim 13, Toso discloses the device of claim 12, wherein said belt releasable fastener comprises cooperative hook-and-loop type fastener elements capable of varying the effective length of said belt member (col. 3, lines 13-14).

As regards claim 14, Toso disclose the device of claim 1, wherein each of said first leg member and said second leg member comprises releasable fasteners in the form of a buckle for adjustment of said predetermined length of each of said first leg member and said second leg member (col. 3, lines 30-35).

As regards claim 16, Toso discloses the device of claim 1, wherein said first leg member comprises a first strap member (26) having an upper end attached to the belt member and an opposite lower end attached to a lower end portion, said lower end portion terminating in a first loop (34) attached in use during sleep to a wearer's first leg,

below the wearer's knee and said second leg member comprises a second strap portion (28) having an upper end attached to the belt member and an opposite lower end attached to a lower end portion, said lower end portion terminating in a second loop (36) attached in use during sleep to a wearer's second leg, below the wearer's knee.

As regards claim 17, Toso discloses the device of claim 16, wherein each of said first loop and said second loop is capable of encircling the wearer's associated lower leg, which includes the foot, in use during sleep.

Regarding claim 18, Toso discloses the device of claim 16, wherein each of said first leg member and said second leg member comprises a releasable fastener in the form of a buckle for attachment of said first loop and said second loop about each of the wearer's lower legs (col. 3, lines 30-35).

As regards claim 19, Toso discloses the device of claim 18, wherein each of said first loop and said second loop is adjustable to accommodate attachment to wearers of different lower leg dimensions (col. 3, lines 24-33).

9. Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 504,598 ("Leyda").

As regards claim 1, Toso discloses a back support with knee and foot engaging straps that can be used as a sleep-aiding device for reducing leg muscle cramping during sleep. The device of Toso comprises a belt member (14) being that is capable of being worn at a wearer's waist in use during sleep, a first leg member (26) capable of being worn in use during sleep, with an upper end portion attached at said belt member and a lower end portion attached at a lower portion of a wearer's first leg, below the

wearer's knee, and a second leg member (28) capable of being worn in use during sleep, with an upper end portion attached at said belt member and a lower end portion attached at a lower portion of a wearer's second leg, below the wearer's knee, said first leg member being adjustable (col. 3, lines 30-33) to a predetermined length between attachment at said belt member and attachment at the lower portion of the wearer's first leg and said second leg member being adjustable (col. 3, lines 30-33) to a predetermined length between attachment at said belt member and attachment at the lower portion of the wearer's second leg, said predetermined length of said first leg member and said predetermined length of said second leg member capable of being selected to restrict stretching of the wearer's legs to full extension during sleep (note Fig. 4).

As regards claim 3, Toso discloses the device of claim 1, wherein said lower end portion of said first leg member defines a lower loop (34) for receiving a wearer's first foot therethrough, and said lower, end portion of said second leg member defines a lower loop (36) for receiving a wearer's second foot therethrough.

Regarding claim 4, as can be seen in Fig. 1, Toso discloses that the lower loop of said first leg member in use during sleep is capable of encircling the wearer's first foot and said lower loop of said second leg.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3772

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 2, 8, 9, 15 and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Toso.

As regards claim 2, Toso fails to teach the device of claim 1, wherein said upper end portion of said first leg member is attached at said belt portion by an upper loop formed over said belt member, and said upper end portion of said second leg member is attached at said belt portion by an upper loop formed over said belt member.

Absent a critical teaching and or a showing of unexpected results derived from the attachment of the first and second leg members to the belt portion by loops formed over the belt, the examiner contends that the attachment configuration is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 8, Toso fails to disclose the device of claim 8, wherein each said first and second fasteners comprises cooperative hook-and-loop type fastener elements for varying said predetermined length. However, it would have been *prima facie* obvious to one having ordinary skill in the art to substitute the buckle arrangement

Art Unit: 3772

of Toso for adjusting the size of the loops, for a hook and loop closure, since they are well known equivalents.

As to the claim 9 and the cantilevered tabs, absent a critical teaching and/or a showing of unexpected results derived from the use of cantilevered tabs, the examiner contends that the cantilevered tabs are an obvious design choice that does not patentably distinguish applicant's invention.

As regards claim 15, Toso fails to disclose the device of claim 14, wherein each said releasable fastener comprises cooperative hook-and-loop type fastener elements for varying said predetermined length. However, it would have been *prima facie* obvious to one having ordinary skill in the art to substitute the buckle arrangement of Toso for adjusting the size of the first and second leg members, for a hook and loop closure, since they are well known equivalents.

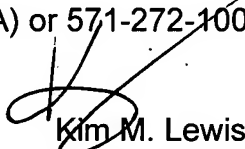
As regards claim 20, Toso fails to disclose the device of claim 18, wherein each of said releasable fasteners comprises cooperative hook-and-loop type fastener elements. However, it would have been *prima facie* obvious to one having ordinary skill in the art to substitute the buckle arrangement for adjusting the size of the foot loop, for a hook and loop closure, since they are well known equivalents.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

Art Unit: 3772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis
Primary Examiner
Art Unit 3772

kml
July 16, 2007